

1 KEKER, VAN NEST & PETERS LLP
2 ELLIOT R. PETERS - # 158708
3 epeters@keker.com
4 AJAY S. KRISHNAN - # 222476
5 akrishnan@keker.com
6 BEVAN A. DOWD - # 308611
7 bdowd@keker.com
8 633 Battery Street
9 San Francisco, CA 94111-1809
10 Telephone: 415 391 5400
11 Facsimile: 415 397 7188

7 WANGER JONES HELSLEY PC
8 OLIVER W. WANGER - # 40331
9 owanger@wjhattorneys.com
PETER M. JONES - # 105811
pjones@wjhattorneys.com
265 E. River Park Circle, Suite 310
Fresno, CA 93720
Telephone: 559 233 4800
Facsimile: 559 233 9330

12 Attorneys for Dr. Yorai Benzeevi and
13 HealthCare Conglomerate Associates, LLC

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF TULARE, VISALIA DIVISION

16 In re SEARCH WARRANT No. 013487
17 EXECUTED AUGUST 22, 2017 AT
CHASE BANK

19 YORAI BENZEEVI,

20 Moving Party,

21 v.

22 SUPERIOR COURT OF THE COUNTY
OF TULARE

23 Respondent,

24 TULARE COUNTY DISTRICT
ATTORNEY'S OFFICE,

26 Real Party in Interest.

RECEIVED
TULARE COUNTY SUPERIOR COURT
ADMINISTRATION

OCT 03 2018

STEPHANIE CAMERON, CLERK
BY: CA

Case No.

REPLY IN SUPPORT OF MOTION TO
SEAL AND FOR A PROTECTIVE ORDER
PORTIONS OF DR. YORAI BENZEEVI'S
MEMORANDUM IN SUPPORT OF HIS
MOTION FOR RETURN OF SEIZED
PROPERTY AND RELATED
EVIDENTIARY HEARING

Date: October 5, 2018
Time: 2:00 p.m.
Dept.: 13
Judge: Hon. John P. Bianco

1 **I. INTRODUCTION**

2 The District Attorney's opposition to Dr. Yorai Benzeevi's Motion to Seal and for a
3 Protective Order ("the Motion") ignores the fundamental presumption that Dr. Benzeevi is
4 innocent until proven guilty and seeks to inflame the media and other Tulare residents by publicly
5 airing his private financial information. Because the public has little, if any, interest in Dr.
6 Benzeevi's private account information or related financial analysis, this Court should grant Dr.
7 Benzeevi's Motion, which seeks to seal narrowly tailored private financial information.

8 Notably, the State opposed only a narrow portion of the Motion. The State does not
9 object to sealing HealthCare Conglomerate Associate's ("HCCA") financial information. Nor
10 does the State object to the entry of a protective order prohibiting the parties from sharing the
11 sealed information outside of their respective offices.

12 As for the portion of the Motion that the State opposed, the public has little to no interest
13 in the account statements, account balances, transaction history, and related financial analysis of a
14 California citizen who has been neither charged with nor convicted of a crime. The right to
15 privacy under the California constitution "extends to one's confidential financial affairs." *Valley*
16 *Bank of Nev. v. Super. Ct.*, 15 Cal. 3d 652, 656 (1975). This right embraces confidential financial
17 information in "**whatever form it takes**, whether that form be tax returns, checks, statements, or
18 other account information." *Fortunato v. Super. Ct.*, 114 Cal. App. 4th 475, 481 (2003)
19 (emphasis added). Thus, Dr. Benzeevi's bank statements, transaction history, and related analysis
20 of his personal financial history—much of which have nothing to do with the allegations before
21 this Court—fall squarely within this constitutionally protected right. *See id.* (recognizing the
22 "constitutional right of privacy in financial documents in a bank's possession").

23 The State makes no specific argument about why the public interest supposedly outweighs
24 Dr. Benzeevi's rights in his private financial information.¹ *See Cal. R. Ct. 2.550(d)(1)*. Nor does
25 the State present any case law in support of its radical position that it may invade and publicly

27 ¹ Although this investigation may have generated significant public interest, "it does not
28 necessarily follow that the public has a legally cognizable interest" in accessing Dr. Benzeevi's
 confidential financial information. *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214,
 1226 (Fed. Cir. 2013).

1 disclose the constitutionally protected private financial information of an individual who has not
2 been charged with any crime. That the State would pursue such a tactic to tarnish Dr. Benzeevi's
3 reputation is highly problematic.

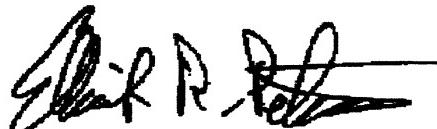
4 Moreover, Dr. Benzeevi's proposed redactions are narrowly tailored and seek to protect
5 only Dr. Benzeevi's private financial information related to account balances, withdrawals and
6 deposits, and other spending history. *See Overstock.com v. Goldman Sachs Grp., Inc.*, 231 Cal.
7 App. 4th 471, 506 (2014) (noting with approval a willingness to redact and criticizing "an-all-or-
8 nothing approach" to sealing entire documents (internal quotation marks and citation omitted)).

9 For the reasons outlined above and in its opening Motion, this Court should grant in its
10 entirety the motion to seal Dr. Benzeevi and HCCA's financial information.

12 Dated: October 3, 2018

KEKER, VAN NEST & PETERS LLP

13
14
15 By:



16 ELLIOT R. PETERS

17 Attorneys for Dr. Yorai Benzeevi and
18 HealthCare Conglomerate Associates, LLC

28